

Request for Quotation (RFQ)

Return Bid to: jennifer.oleary@tpwd.texas.gov (email)
or 512-389-4895 (fax)

Company Name: _____
Attention: _____
Address: _____
City, State, Zip: _____
Phone: _____

Requisition No.: **802-15-JR030**
Due Date and Time: **June 3, 2015; 2:00 pm CT**
TIN #: _____
Signature: _____
Email: _____

Instructions

- Any purchase resulting from this response shall be subject to the attached Terms and Conditions.
- Responses shall be submitted on this form, and must be manually signed.
- TPWD is a TAX EXEMPT Agency.

Delivery Address: Texas Parks & Wildlife Department
Attention: See specifications
Physical Address: _____
City, State, Zip: _____

Item	Description	Class/Item 640-15	Qty	Unit of Measure	Unit Price	Extension
	Texas Parks and Wildlife is seeking quotes for custom printed paper and plastic bags and warehousing of bags for release to TPWD on an as needed basis , per attached specifications, terms and conditions.					
1	Custom Printed Gusset Plastic Bags					
	Option 1:		30	M/ Thousand	\$	\$
	Option 2:		40	M/ Thousand	\$	\$
	Option 3:		50	M/ Thousand	\$	\$
2	Custom Printed 30# Brown Paper Bags					
	Option 1:		25	M/ Thousand	\$	\$
	Option 2:		75	M/ Thousand	\$	\$
	Option 3:		100	M/ Thousand	\$	\$
3	Custom Printed 40# Brown Paper Bags					
	Option 1:		25	M/ Thousand	\$	\$
	Option 2:		40	M/ Thousand	\$	\$
	Option 3:		50	M/ Thousand	\$	\$
4	One Time Set-up Fee					
			1	Ea	\$	\$
	Bidder shall indicate below the calendar days, after receipt of order, that printing will be completed and bags available for shipment requests per Specification paragraphs 8 and 9.					

For Further Information Contact: Jennifer O'Leary, CTCM Phone No.: 512-389-4646
(Purchaser Name)

DELIVERY IN _____ CALENDAR DAYS ARO. CASH DISCOUNT _____ % _____ DAYS.

The period of acceptance of this response is 30 calendar days.

Custom Printed Plastic and Paper Bags

Specification 802-15-JR030

May 2015

1. **INTRODUCTION:** Texas Parks and Wildlife Department (TPWD) is seeking quotes for custom printed plastic and paper bags to be used in State Parks resale stores. Bag inventory is to be warehoused by awarded vendor and released to TPWD ***on an as needed basis.***
2. **INTENT:** It is TPWD's intent to award a one-time Purchase Order (PO) to a single bidder that offers best value to the agency.
3. **QUANTITIES:** Quantity listed is the projected quantity. TPWD reserves the right to increase or decrease quantities prior to award, dependent upon bid results and budget constraints.
4. **AMENDMENTS:** The Purchase Order may be amended in writing by mutual consent of both parties.
5. **REQUIREMENTS:** Bidder shall provide all labor, equipment, materials and any other need necessary or incidental to provide goods in accordance with the terms and conditions as set forth herein.
6. **QUALIFICATIONS AND EXPERIENCE:** Bidder shall be a company experienced in the business of plastic and paper bag printing. Recent start-up businesses do not meet the requirements of this solicitation. A start-up business is defined as a new company that has no previous operational history or expertise in the relevant business and is not affiliated with a company that has the history or expertise.
7. **SAMPLES:** TPWD may request bidders submit samples of products for inspection of quality and durability. Samples may be inspected through any combination of the following methods: online product reviews, visual hands-on inspection and/or testing of samples.
8. **MINIMUM SPECIFICATIONS:**
 - 8.1. **Gusset Plastic Bag**
 - 8.1.1. 15"W x 18.25"L
 - 8.1.2. 3.5" bottom gusset
 - 8.1.3. 3" die cut handles
 - 8.1.4. 2 ml plastic
 - 8.1.5. Color: White
 - 8.1.6. Recycled
 - 8.1.7. Boxed 200 bags per case
 - 8.1.8. Custom printing with PMS Green 347C

8.2. **30# Kraft Brown Paper Bag**

- 8.2.1. 8.5" x 11"
- 8.2.2. Boxed 200 bags per case
- 8.2.3. Recycled
- 8.2.4. Custom printing with PMS Green 3425U

8.3. **40# Kraft Brown Paper Bag**

- 8.3.1. 7" x 13.75" x 4.5"
- 8.3.2. Boxed 500 bags per case
- 8.3.3. Recycled
- 8.3.4. Custom printing with PMS Green 3425U

8.4. **Bag printing**

- 8.4.1. All bags shall be one side printed with State Parks Store Logo
- 8.4.2. All bags shall be one side printed with following language under store logo: TEXAS PARKS AND WILDLIFE. Thank you for your support. Revenues generated by Texas State Parks Stores enable staff to continue to care for our parklands and to offer a wide range of visitor services.
- 8.4.3. Plastic bags shall include additional second side printed with TPWD Agency Logo
- 8.4.4. Vector ready artwork provided by agency
- 8.4.5. Logo proof required. Proof must be reviewed and approved by TPWD before work can begin.

8.5. **Warehousing of Bag Inventory**

- 8.5.1. Vendor shall provide warehousing for printed bags
- 8.5.2. Vendor shall include warehousing fees per M(thousand) in bid price

9. **SHIPPING AND DELIVERY:**

- 9.1. Vendor shall release/ship bags to specified State Park locations, ***on an as needed basis.***
- 9.2. TPWD Personnel authorized to request bags:
 - 9.2.1. Primary: Tony Lucio, 512-389-8474, anotonio.lucio@tpwd.texas.gov
 - 9.2.2. Secondary: Thomas Wilhelm, 512-389-8698, thomas.wilhelm@tpwd.texas.gov
- 9.3. Shipped bags shall include invoice for shipping fees:
 - 9.3.1. Shipping shall be F.O.B. Destination, Prepaid & Add
 - 9.3.2. Shipping fees will be paid by specified State Park location

10. **INVOICING:** Awarded vendor may submit invoice for bags upon completion of printing and confirmation of warehoused inventory. TPWD will pursue appropriate legal remedies to recover payment if the awarded vendor fails to provide goods as specified herein. Reference General Terms and Conditions, Paragraph 9 for additional information concerning invoicing and payment.

11. AWARD PROCESS: TPWD will award a PO to the bidder whose quote is considered to be the Best Value to TPWD, price and other factors considered. It is TPWD's sole discretion to determine best value. The following factors may be used to evaluate quotes:

- 11.1. Lowest Price
- 11.2. Technical Capability – Meeting or Exceeding Requirements
- 11.3. Delivery
- 11.4. Past Performance

Attachment A

Logos

State Park Store Logo



TPWD Agency Logo



Attachment B
State Park Locations

Park Name	Mailing Address	Delivery Address	City	Zip
ABILENE SP	150 Park Rd 32	FM 89, 150 Park Rd 32	Tuscola	79562
ALBERT & BESSIE KRONKOSKY SNA	7690 Hwy 46 West	7690 Hwy 46 West	Pipe Creek	78063
ATLANTA SP	927 Park Rd 42	927 Park Rd 42	Atlanta	75551
BALMORHEA SP	P O Box 15	9207 H. 17S	Toyahva le	79786
BARRINGTON FARM SITE	P O Box 305	23100 Barrington Ln.	Washin gton	77880-0305
BARTON WARNOCK VISITOR CENTER	HC 70, Box 375	FM 170 W	Terlingu a	79852
BASTROP SIGN SHOP	P O Box 518	100 Park Road 1A	Bastrop	78602-
BASTROP SP	P O Box 518	100 Park Road 1A	Bastrop	78602-
BATTLESHIP TEXAS	3523 Independence Parkway S		LaPorte	77571
BIG BEND RANCH SP	HCR 67, Box 33	1900A Saucedo Rd	Presidio Mailing: Marfa, TX	79845 79843
BIG SPRING SP	#1 Scenic Drive		Big Spring	79720
BLANCO SP	P O Box 493	US 281 S, Park Rd 23	Blanco	78606
BONHAM SP	1363 State Park 24	1363 State Park 24	Bonham	75418
BRAZOS BEND SP	21901 FM 762		Needvill e	77461-9511
BUESCHER SP	P O Box 75	100 Park Road 1E	Smithvill e	78957-0075
CADDO LAKE SP	245 Park Rd 2	245 Park Rd 2	Karnack	75661
CAPROCK CANYONS SP & TRAILWAY	P O Box 204	3 miles N of Quitaque on FM 1065	Quitaqu e	79255
CEDAR HILL SP	1570 W. FM 1382		Cedar Hill	75104
Chinati Mountains SP (C/O Big Bend Complex)	P O Box 2319		Presidio	79845
CHOKE CANYON SP (Calliham)	P O Box 2	358 Recreation Road 8	Calliha m	78007
CHOKE CANYON SP (South Shore)	P O Box 2	358 Recreation Road 8	Calliha m	78007
CLEBURNE SP	5800 Park Rd 21		Cleburn e	76033
COLORADO BEND SP	P O Box 118	10 miles S of Bend on Gravel Rd	Bend	76824
COOPER LK SP (Doctors Creek)	1664 FM 1529 South	1664 FM 1529 South	Cooper	75432
COOPER LK SP (South Sulphur)	1690 FM 3505	1690 FM 3505	Sulphur Springs	75482
COPPER BREAKS SP	777 Park Road 62		Quanah	79252-7679

DAINGERFIELD SP	455 Park Road 17	455 Park Road 17	Daingerfield	75638
DAVIS MOUNTAINS SP	PO Box 1707	TX Hwy 118 N, Park Rd 3	Fort Davis	79734
DEVILS RIVER SNA	HCR 1, Box 513	US Hwy 277 N	Del Rio	78840
Devils Sinkhole SNA	P O Box 678	101 N. Sweeten Street	Rocksprings	78880
DINOSAUR VALLEY SP	P O Box 396	Off FM 205	Glen Rose	76043
EISENHOWER SP	50 Park Road 20		Denison	75020-4878
ENCHANTED ROCK SNA	16710 Ranch Rd 965		Fredericksburg	78624
FAIRFIELD LAKE SP	123 State Park Rd 64	TX 2570 E	Fairfield	75840
FALCON SP	P O Box 2	Park Rd 46	Falcon Heights	78545
FANTHORP INN SHS	c/o Washington-on-the-Brazos SHP, P O Box 305	12300 Park Rd 12	Washington	77880-0305
FORT BOGGY SP	4994 Hwy. 75 South		Centerville	75833
FORT LEATON SHS	P O Box 2439	FM 170 E	Presidio	79845
FORT PARKER SP	194 Pk Rd 28		Mexia	76667
FRANKLIN MOUNTAINS SP	1331 McKelligon Canyon Rd		El Paso, TX	79930
FT RICHARDSON SP, SHS, & LOST CREEK RESERVOIR TWY	228 State Park Road 61		Jacksboro	76458
GALVESTON ISLAND SP	14901 FM 3005	14901 FM 3005	Galveston	77554
GARNER SP	234 RR 1050	US 83 N	Concan	78838
GOLIAD SP	108 Park Rd 6		Goliad	77963-3206
GOOSE ISLAND SP	202 S Palmetto St. (Lamar)		Rockport	78382
GOVERNMENT CANYON SNA	12861 Galm Rd		San Antonio	78254
GUADALUPE RIVER SP	3350 Park Rd 31		Spring Branch	78070
HILL COUNTRY SNA	10600 Bandera Creek Rd		Bandera	78003
HONEY CREEK SNA	3350 Park Rd 31	c/o Guadalupe River	Spring Branch	78070
HUECO TANKS SHS	6900 Hueco Tanks Rd #1		El Paso	79938
HUNTSVILLE SP	P O Box 508	565 Park Road 40 W	Huntsville	77342-0508
INDIAN LODGE	PO Box 1707	Tx Hwy 118N, Park Rd 3	Fort Davis	79734
INKS LAKE SP	3630 Pk Rd 4 W		Burnet	78611
KICKAPOO CAVERN SP	P O Box 705	22 & 1/2 miles N of Hwy 90 on RR 674	Brackettville	78832
LAKE ARROWHEAD SP	229 Park Road 63	229 Park Road 63	Wichita Falls	76310
LAKE BOB SANDLIN SP	341 State Park Road 2117	341 State Park Road 2117 SH 21	Pittsburg	75686

LAKE BROWNWOOD SP	200 State Hwy Park Road 15	TX 279 NW on Park Road 15	Brownwood	76801
LAKE CASA BLANCA INTERNATIONAL SP	P.O. Box 1844	5102 Bob Bullock Loop	Laredo	78044
LAKE COLORADO CITY SP	4582 FM 2836		Colorado City	79512
LAKE CORPUS CHRISTI SP	P O Box 1167	23194 Park Road 25	Mathis	78368
LAKE LIVINGSTON SP	300 State Park Road 65		Livingston	77351
LAKE MINERAL WELLS SP and Trailway System	100 Park Rd 71	100 Park Road 71	Mineral Wells	76067
LAKE SOMERVILLE SP (Birch Creek)	14222 Park Rd 57		Somerville	77879-9713
LAKE SOMERVILLE SP (Nails Creek)	6280 FM 180		Ledbetter	78946
LAKE SOMERVILLE WMA & TRAILWAY	6280 FM 180		Ledbetter	78946-7036
LAKE TAWAKONI SP	10822 FM 2475	10822 FM 2475	Wills Point	75169
LAKE TEXANA SP transferred to LNRA, no longer operated by TPWD	46 Park Rd 1	6.5 miles E of Edna Hwy 111	Edna	77957-0760
LAKE WHITNEY SP	P O Box 1175	433 FM 1244	Whitney	76692
LOCKHART SP [Austin # 376-1909]	4179 State Park Rd		Lockhart	78644-9716
LONGHORN CAVERNS SP Leased Concessionaire	P O Box 732	6211 Park Rd 4 So.	Burnet	78611
LOST MAPLES SNA	37221 FM 187	37221 FM 187	Vanderpool	78885
LYNDON B. JOHNSON SP & SHS	P O Box 238	199 SP Rd 52	Stonewall	78671
MARTIN CREEK LAKE SP	9515 County Road 2181D	9515 County Road 2181D	Tatum	75691-3425
MARTIN DIES JR. SP	634 Park Road 48 South	10 miles W of Jasper on Hwy 190	Jasper	75951
McKINNEY FALLS SP	5808 McKinney Falls Pkwy.		Austin	78744
MERIDIAN SP	173 Park Rd 7	173 Park Rd 7	Meridian	76665
MISSION TEJAS SP	120 State Park Rd. 44	120 State Park Rd. 44	Grapeland	75844
MONAHANS SANDHILLS SP	P O Box 1738	I-20 E Exit #86	Monahans	79756
MONUMENT HILL/ KREISCHE BREWERY SHS's	414 State Loop 92		La Grange	78945-5733
MOTHER NEFF SP	1680 TX 236 HWY Moody, 76557		Moody	76557-3317
MUSTANG ISLAND SP	P O Box 326	17047 State Hwy 361	Port Aransas	78373
OLD TUNNEL SP	P O Box 132		Waring	78074
PALMETTO SP	78 Park Road 11 South		Gonzales	78629-5180
PALO DURO CANYON SP	11450 Park Road 5	13 Miles E of Canyon at end of Hwy 217	Canyon	79015

PALO PINTO MOUNTAINS	1915 FM 2372		Strawn	76475
PARRIE HAYNES RANCH	179 Gann Branch Road		Killeen	76549
PEDERNALES FALLS SP	2585 Park Road 6026		Johnson City	78636
POSSUM KINGDOM SP	P O Box 70	17 miles N of Caddo on Park Rd 33	Caddo	76429
PURTIS CREEK SP	14225 FM 316	14225 FM 316	Eustace	75124
RAY ROBERTS LAKE SP (Greenbelt & Satellites)	100 PW 4137		Pilot Point	76258-8944
RAY ROBERTS LAKE SP (Isle du Bois)	100 PW 4137		Pilot Point	76258-8944
RAY ROBERTS LAKE SP (Johnson Branch)	100 PW 4153		Valley View	76272
San Angelo SP	3900-2 Mercedes Rd		San Angelo	76901
SAN JACINTO BATTLEGROUND SHS	3523 Independence Parkway S		LaPorte	77571
SEA RIM SP	PO Box 356	19335 So. Hwy 87 or Gulfway Dr.	Sabine Pass	77655
SEMINOLE CANYON SHS	P O Box 820	US Hwy 90 W	Comstock	78837
SHELDON LAKE S. P. & ENVIRONMENTAL LEARNING CENTER	14140 Garrett Road		Houston	77044
SOUTH LLANO RIVER SP	1927 Park Road 73	US 377 S, 5 miles S of Junction	Junction	76849-9502
STEPHEN F. AUSTIN SP	P O Box 125 Park Road 38	3 miles E of Sealy on IH 10, Exit 723	San Felipe	77473-0125
TYLER SP	789 Park Rd 16	789 Park Rd 16	Tyler	75706-9141
VILLAGE CREEK SP	P.O. Box 8565	8854 Park Road 74 (Off Alma Drive)	Lumberton	77657
WASHINGTON-ON-THE-BRAZOS SHS	P O Box 305	23400 Park Road 12	Washington	77880-0305
WORLD BIRDING CENTER - ESTERO LLANO GRANDE	154 A Lakeview Dr.		Weslaco	78596
WORLD BIRDING CENTER - RESACA DE LA PALMA	P O Box 714	1000 New Carmen Road, Brownsville 78520	Olmito	78575
WORLD BIRDING CENTER - BENTSEN-RIO GRANDE VALLEY SP	2800 South Bentsen Palm Drive		Mission	78572
Wyler Aerial Tramway	1700 McKinley		El Paso	79930

GENERAL TERMS AND CONDITIONS

Revised December 2014

(ITEMS BELOW APPLY TO AND BECOME A PART OF THE CONTRACT)

Any Contract awarded as a result of this RFP will contain the general terms and conditions listed below in this Section. Subcontractors are also obliged to comply with these provisions.

1. **DEFINITIONS:** As used throughout this solicitation, the following terms have the meaning set forth below. All other terms have the meaning set forth in Webster's II New College Dictionary.

- 1.1. **Contractor:** The individual, corporation, company, partnership, firm, or organization that has to furnish the materials and has to perform the work as stated in the solicitation.
- 1.2. **ESBD:** The Electronic State Business Daily, which is available online at <http://esbd.cpa.state.tx.us/>.
- 1.3. **Gov't Code:** The Texas Government Code.
- 1.4. **Owner:** Texas Parks and Wildlife Department, an agency of the State of Texas.
- 1.5. **Party/Parties:** Either the TPWD and Respondent separately or collectively.
- 1.6. **Respondent:** Any person or vendor who submits a Bid/Proposal in response to this solicitation.
- 1.7. **Services:** Includes the use of labor, materials, facilities, equipment, and any other need that is necessary or incidental to the successful completion of the contract.
- 1.8. **Subcontractor:** Any supplier, distributor, Contractor, person, or firm furnishing to the Contractor, materials or services necessary or incidental to the performance of the contract between TPWD and Contractor.
- 1.9. **TAC:** The Texas Administrative Code, which is the publication for administrative rules.
- 1.10. **TPWD:** Texas Parks and Wildlife Department acting on behalf of the State of Texas.

2. **SPECIFICATIONS:**

- 2.1. The goods/services provided shall be in accordance with the purchase specifications herein. TPWD will decide the answers to all questions that may arise as to the interpretation of the specifications and the quality, or acceptability of goods/services provided. TPWD will decide the rate of progress of the work and the acceptable fulfillment of the goods/service on the part of the Contractor.
- 2.2. Catalogs, brand names or manufacturer's references are descriptive only, and indicate type and quality desired. Bids/Proposals on brands of like nature and quality will be considered unless advertised under §2155.067, Texas Government Code (Gov't Code). If offering other than references, response should show manufacturer, brand or trade name, and other description of product offered. If other than brand(s) specified is offered, illustrations and complete description of product offered are requested to be made part of the bid. Failure to take exception to specifications or reference data will require bidder to furnish specified brand names, numbers, etc.
- 2.3. Unless otherwise specified, items shall be new and unused and of current production.
- 2.4. Samples, when requested, must be furnished free of expense to the State. If not destroyed in examination, they will be returned to the respondent, on request, at respondent's expense. Each sample should be marked with respondent's name and address, and requisition number. Do not enclose in or attach response submission to sample.
- 2.5. The State will not be bound by any oral statement or representation contrary to the written specifications of this Solicitation.
- 2.6. Manufacturer's standard warranty shall apply unless otherwise stated in the solicitation.

3. **AWARD OF A PURCHASE ORDER:** Standard Purchase Order Terms and Conditions apply. If a conflict exists between the standard purchase order terms and conditions and specific language in this solicitation, the language in the solicitation shall prevail.

- 3.1. A response to a solicitation is an offer to contract with TPWD based on the terms, conditions and specifications contained in the solicitation. Responses do not become contracts unless and until they are accepted through an authorized TPWD designee by issuance of a purchase order.

- 3.2. This procurement will be conducted in accordance with the State Purchasing Act, Title 10, Subtitle D, Chapters 2151 through 2177, of the Texas Government Code (TGC) and TPWD rules. Any contract resulting from this procurement shall consist of one (1) document. This document will contain all of the rights and duties of the parties extracted from the relevant terms and conditions of: this solicitation (including its attachments, exhibits, supplements, and addenda); the successful Contractor's response; any TPWD request for a Best and Final Offer; and any successful Contractor's Best and Final Offer, if applicable.
- 3.3. Best Value – TPWD will be the sole judge of best value. Award will be based on Best Value criteria and may include, but is not limited to:
- 3.3.1. Best meets the goals and objectives of the solicitation as stated above.
 - 3.3.2. Best meets the quality and reliability of the proposed services.
 - 3.3.3. Effect of the proposed solution on agency productivity.
 - 3.3.4. Provides the most customer focused solution that will best meet the needs of the public.
 - 3.3.5. Experience in successfully providing services in this solicitation.
 - 3.3.6. Vendor Performance: In accordance with Texas Government Code, 2155.074 and 2155.75, vendor performance may be used as a factor in the award.
4. **UNIT PRICES:** Respondents must price per unit shown. Unit prices shall govern in the event of extension errors.
5. **FREIGHT:** Quote FOB destination, freight prepaid and allowed unless otherwise stated within the specifications.
6. **DELIVERY:**
- 6.1. Show number of days required to place material in receiving agency's designated location under normal conditions. Delivery days mean calendar days, unless otherwise specified. Failure to state delivery time obligates respondent to deliver in 14 calendar days. Unrealistic delivery promises may cause solicitation to be disregarded.
 - 6.2. If delay is foreseen, Contractor shall give written notice to the TPWD. Contractor must keep the TPWD advised at all times of status of order.
 - 6.3. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes the TPWD to purchase supplies elsewhere and charge full increase, if any, in cost and handling to defaulting Contractor.
 - 6.4. Substitutions: No substitutions permitted without written approval of TPWD.
 - 6.5. Delivery shall be made during normal working hours only, unless prior approval has been obtained from ordering agency. Normal working hours are 8:00 AM until 5:00 PM Monday through Friday except State and National holidays.
7. **TESTING AND INSPECTION:**
- 7.1. TPWD may test and inspect goods and services purchased under the Contract to ensure compliance with the specifications of this RFP and the Contract. TPWD may also test and inspect goods and services before they are purchased under the Contract. Authorized TPWD personnel shall have access to the Respondent's place of business for the purpose of inspecting the goods. To the extent practical, TPWD inspections will not disrupt the Respondent's daily operations. Tests shall be performed on samples submitted with the Proposal or on samples taken from regular shipments. All costs of testing and inspection shall be borne by the Respondent. In the event the goods tested fail to meet or exceed all conditions and requirements of the solicitation and Contract, the goods will be rejected in whole or in part, at the State's option, and returned to the Respondent or held for disposition at the Respondent's expense. Latent defects may result in cancellation of the Contract at no expense to the state.
 - 7.2. If material fails to meet specifications, the Respondent will be notified by fax / mail or e-mail. The Respondent will have ten (10) working days after receipt of the notification to remove the rejected material from state property. Material will be removed at the Respondent's expense. Material not removed in the allotted time period will be disposed by TPWD. The Respondent will be charged for all disposable expenses conducted by TPWD.

8. **CHANGES:** TPWD may at any time, by a written order, make changes within the general scope of this contract, in the definition of services to be performed, and the time (i.e., hours of the day, days of the week, etc.) and place of performance thereof. If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the services under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or time of performance or both and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change, provided, however, that TPWD, if it decides that the facts justify such action, may receive and act upon such claims asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Dispute Resolution."

9. **INVOICING AND PAYMENT:**

- 9.1. In order to receive payment under the Contract, the Respondent must submit an original invoice to TPWD, which will be designated in the purchase order as the "Bill To" address. To be a proper invoice that may be accepted and paid, the invoice must include the following information and/or attachments: (1) Name and address of the Contractor. (2) The Contractor's Texas Identification Number (TIN). (3) The Contractor's invoice remittance address. (4) The purchase order number authorizing the delivery of products or services. (5) A description of what the Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. If the invoice is for a lease, the Contractor must also include the payment number (e.g., 1 of 36).
- 9.2. Disputed Invoices: As stated above, the Respondent will receive notice of an error in an invoice submitted for payment by not later than the 21st day after the date the invoice was received by the TPWD. If an invoice dispute is resolved in favor of the Respondent, the Respondent is entitled to receive interest on the unpaid balance of the invoice, beginning on the date the invoice became overdue, pursuant to §2251.021, Gov't Code. If a dispute is resolved in favor of the TPWD, the Respondent shall submit a corrected invoice that must be paid in accordance with §2251.021. The unpaid balance accrues interest if the corrected invoice is not paid by the appropriate date.
- 9.3. Time and Manner of Payment: Pursuant to Texas Government Code Chapter 2251, Payment by TPWD is overdue on the 31st day after the later of: (1) the date the TPWD receives the goods under the Contract; (2) the date the performance of the service under the contract is completed; or (3) the date the TPWD receives the invoice for the goods or service. Payment by a political subdivision Customer whose governing body meets only once a month or less frequently is overdue on the 46th day after the later event of: (1) the date the Customer receives the goods under the Contract; (2) the date the performance of the service under the contract is completed; or (3) the date the Customer receives the invoice for the goods or service.

10. **PATENTS, TRADEMARKS, OR COPYRIGHTS:** Respondent agrees to defend and indemnify the TPWD and State from claims involving infringement or violation of patents, trademarks, copyrights, trade secrets, or other proprietary rights, arising out of the TPWD's or the State's use of any good or service provided by the respondent as a result of this solicitation.

11. **COPYRIGHTS AND PUBLICATIONS:** The Respondent understands and agrees that, where activities supported by the Contract produce original books, manuals, films, or other original material (hereinafter referred to as "the works"), the Respondent may copyright the works subject to the reservation by the TPWD of a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for state and/or political subdivision purposes:

- the copyright in the works developed under the Contract, and
- any rights of copyright to which the Respondent purchases ownership with funding from the Contract.

The Respondent may publish, at its expense, the results of Contract performance with prior TPWD review and approval of that publication. Any publication (written, visual, or sound) shall include acknowledgment of the support received from the TPWD. One (1) copy of any such publication must be provided to the TPWD. The

TPWD reserves the right to require additional copies before or after the initial review. All copies shall be provided free of charge to the TPWD.

12. **PROHIBITION ON LOBBYING:** The Respondent shall comply with the provisions of a federal law known generally as the Lobbying Disclosure Act, 2 U.S.C. §1601 et seq. By submitting a Proposal, the Respondent certifies that it shall not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence any officer or employee of any federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. §1352. It also certifies that the Respondent shall disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award by completing and submitting Standard Form LLL.
13. **ANTI-TRUST AND ASSIGNMENT OF CLAIMS:** The Contractor may publish, at its expense, the results of Contract performance with prior TPWD review and approval of that publication. Any publication (written, visual, or sound) shall include acknowledgment of the support received from the TPWD and Customers. One (1) copy of any such publication must be provided to the TPWD. The TPWD reserves the right to require additional copies before or after the initial review. All copies shall be provided free of charge to the TPWD.
14. **DEBTS AND DELINQUENCIES:** As required by §2252.903, Gov't Code, the Respondent agrees that any payments due under the Contract shall be directly applied towards eliminating any debt or delinquency including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.
15. **DISPUTE RESOLUTION:**
 - 15.1. The dispute resolution process provided for in Chapter 2260 of Texas Government Code shall be used by TPWD and the Respondent to resolve all disputes arising under this contract. The Contractor shall comply with such rules, as revised from time to time.
 - 15.2. The dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, to attempt to resolve any claim for breach of contract asserted by the Contractor under the Contract. If the Contractor's claim for breach of Contract cannot be resolved by the Parties in the ordinary course of business, it shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Contractor shall submit written notice, as required by Chapter 2260. The notice shall also be given to the individual identified in the Contract for receipt of notices. Compliance by the Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.
 - 15.3. The contested case process provided in Chapter 2260 is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of Contract by TPWD if the Parties are unable to resolve their disputes as described above.
 - 15.4. Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. Neither the execution of the Contract by TPWD nor any other conduct of any representative of TPWD relating to the Contract shall be considered a waiver of sovereign immunity to suit.
 - 15.5. For all other specific breach of contract claims or disputes under the Contract, TPWD and the Contractor shall first attempt to resolve them through direct discussions in a spirit of mutual cooperation. If the Parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by TPWD and the Contractor within fifteen (15) days after written notice by one of them demanding mediation under this Section. The Contractor shall pay all costs of the mediation unless TPWD, in its sole good faith discretion, approves its payment of all or part of such costs. By mutual agreement, TPWD and the Contractor may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that TPWD and the Contractor shall, in good faith, utilize mediation or another non-binding dispute resolution process before pursuing litigation. TPWD's participation in, or the results of, any mediation or other non-binding dispute resolution process under this Section or the provisions of this Section shall not be construed as a waiver by TPWD of (1) any rights, privileges, defenses, remedies or immunities available to TPWD as an agency of the State of Texas or otherwise available to

TPWD; (2) TPWD's termination rights; or (3) other termination provisions or expiration dates of the Contract.

- 15.6. Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by TPWD, the Contractor shall continue performance and shall not be excused from performance during the period any breach of contract claim or dispute is pending under either of the above processes; however, the Contractor may suspend performance during the pendency of such claim or dispute if the Contractor has complied with all provisions of §2251.051, Gov't Code, and such suspension of performance is expressly applicable and authorized under that law.

16. **FRAUD, WASTE, AND ABUSE:** By submitting a Response to this Solicitation, the Respondent represents and warrants that it has read and understood and shall comply with CPA's Anti-Fraud Policy, found at: <http://www.window.state.tx.us/ssv/ethics.html>, as such Policy currently reads and as it is amended throughout the term of the Contract.

17. **NAME CHANGES AND SALES:** If the Contractor changes its name or is sold to another entity, it must provide written notification to TPWD. The Contractor, in its notice, shall describe the circumstances of the name change or sale, state its new name, provide the new Tax Identification Number, and describe how the change will impact its ability to perform the Contract. If the change entails personnel changes for personnel performing the responsibilities of the Contract for the Contractor, the Contractor shall identify the new personnel and provide resumes to TPWD, if resumes were originally required by the Solicitation. TPWD may request other information about the change and its impact on the Contract and the Contractor shall supply the requested information within five (5) working days of receipt of the request.

TPWD may terminate the Contract due to a sale of or change to the Respondent that materially alters the Respondent's ability to perform under the Contract. The TPWD has the sole discretion to determine if termination is appropriate.

18. **CONTRACTOR RESPONSIBILITIES:**

- 18.1. Contractor agrees to comply with all terms and conditions contained in this solicitation and resulting Contract.
- 18.2. Contractor guarantees services offered will meet or exceed the written specifications identified in this solicitation.
- 18.3. **Permits:** Contractor shall be responsible, at the Contractor's expense, for obtaining any and all permits or licenses required by city, county, state, or federal rules, regulations, law, or codes that pertain to the Contract.
- 18.4. **Electrical Items:** All electrical items provided by the Respondent to TPWD under the Contract must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC, or NEMA.
- 18.5. **Executive Head:** Pursuant to §669.003, Gov't Code, the TPWD may not enter into a contract with a person who employs a current or former Executive Head of a state agency until four years have passed since that person was the executive head of the state agency. By submitting a Proposal, the Respondent certifies that it does not employ any person who was the Executive Head of a state agency in the past four years. If section 669.003 applies, respondent shall complete the following information in order for the response submission to be evaluated:

Name of former executive: _____

Name of state agency: _____

Date of separation from state agency: _____

Position with respondent: _____

Date of employment with respondent: _____

- 18.6. Contractor agrees to take precautions necessary to protect person or property against injury or damage, and be responsible for such injury or damage.
- 18.7. Contractor agrees to comply with Federal law or State Worker's Compensation laws which are applicable to the work required or performed under this contract and to pay or cause to be paid all compensation, medical or hospital bills which may become due or payable thereunder, and to protect

and indemnify TPWD from and against any and all liability by reason of injury to employees of Contractor or subcontractor.

- 18.8. Contractor shall provide all labor, equipment and materials (unless otherwise stated herein) necessary to furnish the goods or perform the service. All employees of the Contractor shall be a minimum of 17 years of age and experienced in the type of work to be performed. Only the Contractor and its employees will be allowed on state property during working hours.
19. **TERMINATED CONTRACTS:** By submitting a Response, the Respondent certifies that it has not had a contract terminated or been denied the renewal of any contract for non-compliance with policies or regulations of any state or federally funded program within the past five (5) years nor is it currently prohibited from contracting with a governmental agency. If the Respondent does have such a terminated contract, the Respondent shall identify each and provide an explanation for the termination.
20. **INDEPENDENT CONTRACTOR:** The Contract shall not render the Respondent an employee, officer, or agent of the TPWD for any purpose. The Respondent is and shall remain an independent contractor in relationship to the TPWD. The TPWD shall not be responsible for withholding taxes from payments made under the Contract. The Respondent shall have no claim against the TPWD for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.
21. **ABANDONMENT OR DEFAULT:** If Contractor is found to be in default under any provision of this Contract, TPWD may cancel the Contract without notice and either re-solicit or award the contract to the next best responsive and responsible Respondent. In the event of abandonment or default, Contractor will be responsible for paying damages to TPWD including but not limited to re-procurement costs, and any consequential damages to the State of Texas or TPWD resulting from Contractor's non-performance. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work is significantly changed.
22. **RIGHT TO AUDIT / RECORDS RETENTION:** Contractor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, TPWD or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the above parties in the conduct of the audit or investigation, including providing all records requested. Contractor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract funds were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Contractor shall maintain all such documents and other records relating to this Contract and the State's property for a period of four (4) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the work of this Contract. Contractor and the subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. Contractor must retain all work and other supporting documents pertaining to this Contract, for purposes of inspecting, monitoring, auditing, or evaluating by TPWD and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor. Contractor shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all of such State's work as requested. Contractor's failure to comply with this Section shall constitute a material breach of this Contract and shall authorize TPWD and the State of Texas to immediately assess appropriate damages for such failure. Contractor acknowledges and understands that the acceptance of funds under this Contract shall constitute consent to an audit by the State Auditor, Comptroller or other agency of the State of Texas. Contractor shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards. Furthermore, under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.
23. **FORCE MAJEURE:** TPWD may grant relief from performance of the contract if the Contractor is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the Contractor. The burden of proof for the need of such relief shall rest

upon the Contractor. To obtain release based on force majeure, the Contractor shall file a written request with TPWD.

24. **PROPRIETARY OR CONFIDENTIAL INFORMATION:** Responses may include proprietary or confidential information. TPWD will take reasonable precautions in protecting such information provided that it is clearly identified as proprietary or confidential on the page on which it appears.
25. **RIGHT TO DATA, DOCUMENTS AND COMPUTER SOFTWARE (STATE OWNERSHIP):** Any software, research, reports studies, data, photographs, negatives or other documents, drawings or materials prepared by Contractor in the performance of its obligations under this contract shall be the exclusive property of the State of Texas and all such materials shall be delivered to the State by the Contractor upon completion, termination, or cancellation of this contract. Contractor may, at its own expense, keep copies of all its writings for its personal files. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of Contractor's obligations under this contract without the prior written consent of the State; provided, however, that Contractor shall be allowed to use non-confidential materials for writing samples in pursuit of the work. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.
26. **PUBLIC DISCLOSURE / NEWS RELEASES:** No public disclosures or news releases pertaining to this solicitation shall be made without prior written approval of TPWD.
27. **CONFIDENTIALITY AND SECURITY:** The Respondent should not receive any sensitive or confidential information under the Contract. Any information the Respondent compiles or creates as a result of the Contract must be maintained and protected in accordance with any federal, state, or local laws and regulations that apply. The Respondent shall establish a method to secure the confidentiality of records and other information relating to clients in accordance with applicable federal and state laws, rules, and regulations. The obligations of the Contractor under this Security and Confidentiality Article shall survive this Contract and shall be included in all subcontracts.
28. **TERMINATION:** This contract shall terminate upon full performance of all requirements contained in this contract, unless otherwise extended or renewed as provided in accordance with the contract terms and conditions.
- 28.1. **Termination for Convenience:** TPWD reserve the right to terminate the contract at any time, in whole or in part, without cost or penalty, by providing 30 calendar days' advance written notice if TPWD determines that such termination is in the best interest of the state. In the event of such a termination, the Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TPWD will be liable for payments limited only to the portion of work authorized by TPWD in writing and completed prior to the effective date of cancellation, provided that TPWD shall not be liable for any work performed that is not acceptable to TPWD and/or does not meet contract requirements. All work products produced by the Contractor and paid for by TPWD shall become the property of TPWD and shall be tendered upon request. Termination under this paragraph shall not relieve the vendor of any obligation or liability that has occurred prior to cancellation.
- 28.2. **Termination for Cause/Default:** If the Contractor fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any of the terms or conditions of the Contract, the TPWD may, upon written notice of default to the Contractor, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law or under the Contract.
- 28.3. The rights and remedies of TPWD provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.
- 28.4. TPWD may exercise any other right, remedy or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Contract, or to recover damages for the breach of any agreement being derived from the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless TPWD notifies the Contractor in writing prior to the exercise of such remedy. The Contractor shall remain liable for all covenants and indemnities under the Contract. The Contractor shall

be liable for all costs and expenses, including court costs, incurred by TPWD with respect to the enforcement of any of the remedies listed herein.

29. **SURVIVAL OF TERMS:** Termination of the Contract for any reason shall not release the Respondent from any liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, and invoice and fees verification.
30. **RIGHTS UPON TERMINATION OR EXPIRATION OF CONTRACT:** In the event that the Contract is terminated for any reason, or upon its expiration, TPWD shall retain ownership of all associated work products and documentation obtained from the Respondent under the Contract.
31. **CHANGE IN FEDERAL OR STATE REQUIREMENTS:** If federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted so that either TPWD or the Contractor cannot reasonably fulfill the Contract and if the Parties cannot agree to an amendment that would enable substantial continuation of the Contract, the Parties shall be discharged from any further obligations under the Contract.
32. **TAXES:** Purchases made for state uses are exempt from Texas State Sales Tax and Federal Excise Tax. An Excise Tax Exemption Certificate will be furnished upon written request to TPWD.
33. **BUY TEXAS:** In accordance with §2155.4441, Gov't Code, the Respondent shall, in performing any services under the Contract, purchase products and materials produced in Texas when they are available at a comparable price and in a comparable period of time to products and materials produced outside Texas.
34. **NOTE TO RESPONDENT:** Any terms and conditions attached to a solicitation will not be considered unless specifically referred to on this solicitation form and may result in disqualification of the response submission. If any respondent takes a 'blanket exception' to the entire solicitation or does not provide proposed alternative language, the respondent's response may be disqualified from further consideration.
35. **ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS:** As Required by 1 TAC Chapter 213 (Applicable to State Agency and Institution of Higher Education Purchases Only) 1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. 2) Contractor shall provide DIR with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Contractors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.
36. **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:** Respondent certifies that the responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and the Respondent is in compliance with the State of Texas statutes and rules relating to procurement and that Respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224.
37. **SYSTEM FOR AWARD MANAGEMENT (SAM):** Prior to awarding state funds for goods and/or services rendered, the State of Texas will conduct a required search of your firm using the Federal System for Award Management (SAM). This is a Federal government maintained database that records and tracks organizations, either known to or suspected of contributing to terrorist organizations. No state funds may be paid to an

individual or firm whose name appears on this list. TPWD reserves the right, in its sole discretion, to deny and/or exclude any individual or firm from an award whose name appears on this list.

38. **FEDERAL DISASTER RELIEF FRAUD:** Under Section 2155.006(b) of the Texas Government Code, a state agency may not accept a response or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the response or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Under Section 2155.006 of the Texas Government Code, the respondent certifies that the individual or business entity named in this response is not ineligible to receive the specified contract and acknowledges that any contract resulting from this solicitation may be terminated and payment withheld if this certification is inaccurate.
39. **APPLICABLE LAWS AND VENUE:** The Respondent agrees that the Contract in all respects shall be governed by and construed in accordance with the laws of the State of Texas, except for its provisions regarding conflicts of laws. The Respondent also agrees that the exclusive venue and jurisdiction of any legal action or suit concerning TPWD under this Contract is, and that any such legal action or suit shall be brought, in a court of competent jurisdiction in Travis County, Texas.
40. **APPLICABLE LAWS AND CONFORMING AMENDMENTS:** Contractor must comply with all laws, regulations, requirements and guidelines applicable to a Contractor providing services to the State of Texas as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. TPWD reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for TPWD or Contractor's compliance with all applicable State and federal laws, and regulations.
41. **COMPLIANCE WITH LAWS; DEALING WITH PUBLIC SERVANTS:** The Respondent must comply with all applicable laws at all times, including, without limitation, the following: (i) §36.02 of the Texas Penal Code, which prohibits bribery; (ii) §36.09 of the Texas Penal Code, which prohibits the offering or conferring of benefits to public servants; (iii) §2155.003, Gov't Code, which prohibits the chief clerk or any other employee of the TPWD from having an interest in, or in any manner be connected with, a contract or bid for a purchase of goods or services by an agency of the state or accept from any person to whom a contract has been awarded anything of value or a promise, obligation, or contract for future reward or compensation.
- The Respondent shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract. Except where otherwise expressly required by applicable laws and regulations, TPWD shall not be responsible for monitoring Respondent's compliance with any laws or regulations. If Respondent performs any work knowing or having reason to know that it is contrary to laws or regulations, Respondent shall bear all claims, costs, losses and damages caused by, arising out of or resulting therefrom.
42. **NO WAIVER:** Nothing in this Contract shall be construed as a waiver of the state's sovereign immunity. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppels. TPWD does not waive any privileges, rights, defenses, or immunities available to TPWD by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.
43. **NO LIABILITY UPON TERMINATION:** If this Contract is terminated for any reason, TPWD and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or

related to any such termination. However, Contractor may be entitled to the remedies provided in Government Code, Chapter 2260.

44. **DECEPTIVE TRADE PRACTICES; UNFAIR BUSINESS PRACTICES:** Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Tex. Bus. & Com. Code, Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit, and that such officers have not been found to be liable for such practices in such proceedings.
45. **FALSE STATEMENTS; BREACH OF REPRESENTATIONS:** By signature to this Contract, Contractor makes all the representations, warranties, guarantees, certifications and affirmations included in this Contract. If Contractor signed its Proposal with a false statement or signs this Contract with a false statement or it is subsequently determined that Contractor has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Contract, Contractor shall be in default under this Contract and TPWD may terminate or void this Contract for cause and pursue other remedies available to TPWD under this Contract and applicable law.
46. **ACTUAL AND PERCEIVED CONFLICTS:** By submitting a Proposal, the Respondent represents and warrants that neither it nor its employees and subcontractors have an actual or potential conflict of interest in entering a Contract with TPWD. The Respondent also represents and warrants that entering a Contract with TPWD will not create the appearance of impropriety. In its Proposal, the Respondent shall disclose any existing or potential conflict of interest that it might have in contracting with TPWD. The TPWD will decide, in its sole discretion, whether an actual or perceived conflict should result in Proposal disqualification or Contract termination.
47. **CURRENT AND FORMER TPWD EMPLOYEES:** In addition to the disclosures required above, the Respondent shall also disclose any of its personnel who are current or former officers or employees of the TPWD or who are related, within the third degree by consanguinity (as defined by §573.023, Gov't Code) or within the second degree by affinity (as defined by §573.025, Gov't Code), to any current or former officers or employees of the TPWD.

Respondents must comply with all applicable Texas and federal laws and regulations relating to the hiring of former state employees (see e.g., Texas Government Code Chapters 572 and 573). Such "revolving door" provisions generally restrict former agency heads from communicating with or appearing before the agency on certain matters for two years after leaving the agency. The revolving door provisions also restrict some former employees from representing clients on matters that the employee participated in during state service or matters that were in the employees' official responsibility. Respondent, by signing this solicitation, certifies that it has complied with all applicable laws and regulations regarding former state employees.

Respondent must identify each employee who works for more than one staffing company at any facility and ensure that the employee's cumulative weekly hours worked at all state facilities through any one staffing company does not exceed 40 hours per week.

48. **INSURANCE AND OTHER SECURITY:** Respondent represents and warrants that it will, within ten (10) business days of executing this agreement, provide TPWD with current certificates of insurance or other proof acceptable to TPWD of the required insurance coverage

The Respondent represents and warrants that it will obtain and maintain for the term of the Contract all insurance coverage required to ensure proper fulfillment of the Contract and its liabilities thereunder. The Respondent shall insure any of its motor vehicles used to fulfill its duties under the Contract and ensure that its subcontractors do the same. Such insurance shall comply with Texas statutory requirements and also cover any cargo being delivered to Customers.

The Respondent represents and warrants that all of the above coverage will be obtained from companies that are licensed in the state of Texas, have an "A" rating from Best, and are authorized to provide the coverage. The Respondent shall furnish proof of insurance upon request of TPWD.

49. **SEVERABILITY:** If any provision of the Contract is construed to be illegal or invalid, such construction will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed severable and stricken from the contract as if it had never been incorporated herein, but all other provisions will continue in full force and effect.
50. **HISTORICALLY UNDERUTILIZED BUSINESSES (HUB):** Contractor represents and warrants that it shall comply with the Historically Underutilized Business requirements pursuant to Government Code, Chapter 2261.
51. **AMENDMENTS:** Except as provided in Section III, paragraph 8 of this Contract, this Contract may be amended only upon written agreement between TPWD and Contractor; however, any amendment of this Contract that conflicts with the laws of the State of Texas shall be void ab initio. The Contractor shall not be entitled to payment for any additional services, work, or products that are not authorized by a properly executed Contract amendment.
52. **CHANGE MANAGEMENT:** The Respondent agrees that the key personnel assigned to the Contract shall remain available for the entirety of the project throughout the term of the Contract as long as that individual is employed by the Respondent or unless TPWD agrees to a change in the key personnel.
53. **FEDERAL, STATE, AND LOCAL REQUIREMENTS:** Respondent shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Respondent is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation insurance coverage. Respondent shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Respondent or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. Contractor shall indemnify the State of Texas and shall pay all costs, penalties, or losses resulting from Respondent's omission or breach of this Section.
54. **INDEMNIFICATION AND LIABILITY:** Contractor shall INDEMNIFY and HOLD HARMLESS the State of Texas and Customer, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from any and all liability, actions, claims, demands, or suits, and all related costs, attorney fees, and expenses arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. This indemnity obligation shall apply to any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the performances or actions of Vendor pursuant to this contract; Vendor shall be responsible for all of Customer's defense costs. This indemnity obligation shall further apply to any and all liability, actions, claims, demands, or suits, and all related costs, attorney fees, and expenses arising out of relating to tax liability, unemployment insurance, and/or workers compensation in Vendor's performance under this contract. The defense shall be coordinated by Vendor with the office of the Attorney General when Texas state agencies are named as defendants in any lawsuit, and Vendor may not agree to any settlement without first obtaining the concurrence from the Office of the Attorney General. Vendor and the Customer agree to furnish timely written notice to each other of any such claim.
- a. Infringements
- i) Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Vendor's written approval, (iii) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.
- ii) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense:

- (1) procure for the Customer the right to continue to use the affected portion of the product or service, or
- (2) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

55. **RESPONDENT LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY:** The Respondent shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Respondent shall notify the TPWD Contract Manager in writing of any such damage within one (1) calendar day.
56. **FELONY CRIMINAL CONVICTIONS:** Contractor represents and warrants that Contractor has not and Contractor's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised TPWD as to the facts and circumstances surrounding the conviction.
57. **IMMIGRATION:** The Contractor represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") enacted on September 30, 1996.
58. **SUBCONTRACTORS:** Subcontractors providing service under the contract shall meet the same requirements and level of experience as required of the Contractor. No subcontract under the purchase order shall relieve the primary Contractor of responsibility for the service. If the Contractor uses a subcontractor for any or all of the work required, the following conditions shall apply under the listed circumstances:
- 58.1. Respondents planning to subcontract all or a portion of the work shall identify the proposed subcontractors.
 - 58.2. Subcontracting shall be at the Contractor's expense.
 - 58.3. TPWD retains the right to check subcontractor's background and make determination to approve or reject the use of submitted subcontractors.
 - 58.4. The Contractor shall be the only contact for TPWD and subcontractors. Respondent shall list a designated point of contact for all TPWD and subcontractor inquiries.
 - 58.5. The Respondent, in subcontracting for any performances specified herein, expressly understands and acknowledges that in entering into such subcontract(s), the TPWD is in no manner liable to any subcontractor(s) of the Respondent. In no event shall this provision relieve the Respondent of the responsibility for ensuring that the performances rendered under all subcontracts are rendered so as to comply with all terms of this RFP and Contract. The Respondent shall manage all quality and performance, project management, and schedules for subcontractors. The Respondent shall be held solely responsible and accountable for the completion of all work for which the Respondent has subcontracted.
59. **PROTEST PROCEDURES:** Any Actual or prospective respondent who is aggrieved in connection with this solicitation, evaluation, or award of any contract resulting from this solicitation may formally protest as provided in TPWD's rules at TAC, Title 31, Part 2, Chapter 51, Subchapter L, Rule 51.350 located at: [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=31&pt=2&ch=51&rl=350](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=31&pt=2&ch=51&rl=350)
60. **NON-APPROPRIATION OF FUNDS:** Any contract resulting from this solicitation is subject to termination or cancellation, without penalty to TPWD, either in whole or in part, subject to the availability of state funds. TPWD is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If TPWD becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds which would render TPWD's or respondent's delivery or performance under the contract impossible or unnecessary, the contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, TPWD will not be liable to respondent for any damages, which are caused or associated with such termination, or cancellation and TPWD will not be required to give prior notice.

61. **TEXAS PUBLIC INFORMATION ACT:** Information the bidder provides to Texas Parks & Wildlife in response to this solicitation will be considered public and subject to disclosure under the Texas Public Information Act. However, certain information may be confidential and fall under an exception to disclosure under the Public Information Act such as proprietary information, trade secrets, and certain commercial and financial information where disclosure might cause "*substantial competitive harm to your business*". If the bidder believes that his response to this solicitation contains confidential information in those categories, the bidder must specifically document this at the top or bottom of each page that contains the information the bidder considers confidential. The bidder's documentation must include a statement that confidential information is contained on that page, refer to its exact location on the page, and describe the specific nature of the exception to the Texas Public Information Act that the bidder believes applies to this information, i.e. copyrighted, trade secret, proprietary, financial etc. A general disclaimer that the bidder's response contains confidential information will not be sufficient to meet this requirement. **If such documentation is not provided, Texas Parks and Wildlife Department will assume that all information provided in the response to this solicitation is releasable under the Act.**

Contractor is required to make any information created or exchanged with the state pursuant to this contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state. Contractor will make such information not excepted from disclosure available in an electronic format that is accessible to the public unless Contractor receives written approval from TPWD to provide information in a different format, and such approval becomes part of this Contract.

62. **CIVIL RIGHTS:** The Respondent agrees that no person shall, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief, be excluded from the participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part with funds available under this Contract. The Respondent shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 relating to Equal Employment Opportunity," and as supplemented by regulations at 41 C.F.R. Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity Department of Labor."
63. **CONFLICT OF INTEREST:** Under §2155.003, Gov't Code, a TPWD employee may not have an interest in, or in any manner be connected with a contract or response for a purchase of goods or services by an agency of the state; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation. Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in Section 1.2 of the State of Texas Procurement Manual, which outlines the ethical standards required of public purchasers, employees, and respondents who interact with public purchasers in the conduct of state business, and with any opinions of or rules adopted by the Texas Ethics Commission. Entities who are interested in seeking business opportunities with the State must be mindful of these restrictions when interacting with public purchasers of TPWD or purchasers of other state agencies.
64. **LIMITATION ON AUTHORITY; NO OTHER OBLIGATIONS:** Contractor shall have no authority to act for or on behalf of Texas Parks and Wildlife Department or the State of Texas except as expressly provided for in this Contract; no other authority, power or use is granted or implied. Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or Texas Parks and Wildlife Department.
65. **DRUG-FREE WORKPLACE:** The contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

66. **NOTICES:** Any written notices required under this Contract will be by either hand delivery to Contractor's office address specified in the Execution of response, Exhibit A, of this Contract or by U.S. Mail, certified, return receipt requested, to TPWD, Attn: Purchasing, 4200 Smith School Road, Austin, TX 78744. Notice will be effective on receipt by the affected party. Either party may change the designated notice address in this Section by written notification to the other party.

67. **ORDER OF PRECEDENCE:** In the case of conflicts between the contract documents, the following shall control in this order of priority:

- 67.1. Signed Contract/Purchase Order (or Notice of Award)
- 67.2. Attachments to the Contract/Purchase Order (or Notice of Award)
- 67.3. The Solicitation (e.g., RFP, IFB)
- 67.4. Contractor's Response to the Solicitation and Contractor's Best and Final Offer, if applicable

68. **BUSINESS OWNERSHIP:** BIDDER/VENDOR MUST PROVIDE, IN THE SPACE BELOW, THE NAME AND SOCIAL SECURITY NUMBER OF AN INDIVIDUAL OWNER, A SOLE PROPRIETOR AND ALL PARTNERS, SHAREHOLDERS, OR OWNERS WITH AN OWNERSHIP INTEREST OF AT LEAST TWENTY-FIVE (25) PERCENT OF THE BUSINESS ENTITY ENTERING INTO THIS CONTRACT. BIDDERS THAT HAVE PRE-REGISTERED THIS INFORMATION ON THE CPA/TPASS CENTRALIZED MASTER BIDDERS LIST HAVE SATISFIED THIS REQUIREMENT. IF NOT PRE-REGISTERED, COMPLETE THE FOLLOWING:

DO NOT ENTER "CORPORATION", "PUBLIC CORPORATION", "PUBLICLY TRADED COMPANY" OR OTHER NON-RESPONSIVE ANSWERS. IF NO ONE PERSON CONTROLS 25% OR MORE OF THE ORGANIZATION, ENTER "NONE".

NAME _____	SSN _____	% _____
NAME _____	SSN _____	% _____
NAME _____	SSN _____	% _____
NAME _____	SSN _____	% _____

69. **NO ASSIGNMENT BY CONTRACTOR:** The Respondent shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from the TPWD.

70. **COMPLIANCE WITH OTHER LAW:** In the execution of this Contract, Contractor shall comply with all applicable federal, state, and local laws, including laws governing labor, equal opportunity, safety, and environmental protection. Contractor shall make itself familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances, and regulations which in any manner affect performance under this Contract.

71. **ENVIRONMENTAL PROTECTION:** The Respondent shall be in compliance with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act (42 U.S.C. §7401 et seq.) and the Federal Water Pollution Control Act, as amended, (33 U.S.C. §1251 et seq.).

72. **U.S. DEPARTMENT OF HOMELAND SECURITY'S E-VERIFY SYSTEM:**

- 72.1. By entering into this Contract, the Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:
 - All persons employed to perform duties within Texas, during the term of the Contract; and
 - All persons (including subcontractors) assigned by the Respondent to perform work pursuant to the Contract, within the United States of America.
- 72.2. The Contractor shall provide, upon request of (agency name), an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed.

72.3. If this certification is falsely made, the Contract may be immediately terminated, at the discretion of the state and at no fault to the state, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the state must undertake to replace the terminated Contract.

73. TEXAS IDENTIFICATION NUMBER: The Texas Identification Number (TIN) is a unique 11-digit number assigned by the Texas Comptroller of Public Accounts. When a payee first contracts with a state agency, that payee must provide either a federal Employer Identification Number (EIN) or a Social Security number (SSN). The Texas Identification Number (TIN) is based on this number. (Note: If respondent does not have a TIN, or does not know their TIN, they may list their EIN or SSN on the "Texas Identification Number" line of the Vendor Information Block of their RFP, IFB or RFQ response.)